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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~228.~~ 11

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MAY 23, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 228.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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1 In the Supreme Court, Central Grand Division. January Term, A. D. 1883.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, SUPREME COURT, *Central Grand Division,* } ss:

Proceedings had before the honorable the supreme court of the central grand division of the State of Illinois, begun and held at Springfield, to wit: On the first Tuesday in the month (being the second day) of January, A. D. 1883.

Present: John M. Scott, chief justice; Pinkney H. Walker, justice; John Scholfield, justice; Benjamin R. Sheldon, justice; Alfred M. Craig, justice; John H. Mulkey, justice; A. G. Malone, sheriff; E. A. Snively, clerk.

Be it remembered, that heretofore, to wit: On the 3d day of January, A. D. 1883, there was filed in the office of the clerk of said supreme court a record, which is in the words and figures fol-
2 lowing, to wit:

UNITED STATES OF AMERICA, *State of Illinois, Ford County,* } ss:

To all to whom these presents shall or may come, Greeting:

Know ye, that we having caused to be inspected certain records and proceedings now remaining in the office of the clerk of our circuit court in and for said county, do find therein certain records and proceedings, the same being in words and figures following, to wit:

In Circuit Court. April Term, A. D. 1882.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *Ford County,* } ss:

Pleas before the honorable Owen T. Reeves, one of the judges of the 11th judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Ford County, in the State aforesaid, and at a term thereof begun and held at the court house, in the city of Paxton, in said county, on the first Tuesday (being the fourth day) of April, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the said United States the one hundred and sixth.

Present: Honorable Owen T. Reeves, one of the judges of the 11th judicial circuit of the State of Illinois; Weaver White, clerk; France L. Cook, State's attorney; S. B. Lyman, sheriff.

Attest: WEAVER WHITE, *Clerk.*

In Ford County Circuit Court. April Term, 1882.

3 THE PEOPLE OF THE STATE OF ILLINOIS,
versus
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

Debt.

STATE OF ILLINOIS, } ss:
Ford County, }

Be it remembered that heretofore on, to wit, March 22d, 1882, the said people of the State of Illinois, by A. Sample, their attorney, did file with the clerk of our said circuit court a certain precipe for summons, the same being in words and figures following, to wit:

Precipe.

In the Circuit Court, to the April Term, 1882.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

Debt, $25,000.00. Damages, $25,000.00.

STATE OF ILLINOIS, } ss:
Ford County, }

The clerk of said court will please issue summons in said cause directed to the sheriff of said county to serve returnable as above, & oblige,

A. SAMPLE, *Att'y for Pl'ff.*

To W. WHITE, Esq., cl'k, &c., M'ch 21, 1882.

4 And thereupon, in accordance with the request of said precipe, the clerk of our said court did issue The People's writ of summons, under the seal of our said court, directed to the sheriff of Ford county to execute said summons, together with the sheriff's endorsement thereon, being in words and figures following, viz:

Summons.

STATE OF ILLINOIS, } ss:
Ford County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summons The Wabash, St. Louis and Pacific Railway Company, if it shall be found in your county, personally to be and appear before the circuit court of Ford county on the first day of the next term thereof, to be holden at the courthouse, in Paxton, in said county, on the first Tuesday of April, A. D. 1882, to answer unto The People of the State of Illinois of a plea that it render to the said The People of the State of Illinois the sum of twenty-five thousand dollars debt which it owes and unjustly de-

tains from him to the damage of said plaintiff, as they say, in the sum of twenty-five thousand dollars, and have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness: Weaver White, clerk of our said court and the seal thereof, at Paxton, in said county, this 22d day of March, A. D. 1882.

[Seal Circuit Court of Ford County, Illinois.]

WEAVER WHITE, *Clerk.*

The following is the sheriff's return:

STATE OF ILLINOIS, *Ford County:*

5 Not being able to find the president of the Wabash, St. Louis and Pacific Railway Company in my county I have duly served the within writ by reading the same to M. Johnson, station agent, of said company at Piper city, in said county, and at the same time delivering to him a true copy of the within, as I am herein commanded, this 24th day of March, A. D. 1882.

S B. LYMAN, *Sheriff,*
By J. W. RAMSAY, *Dep't.*

And afterwards, on, to wit, March 25, 1882, said plaintiffs, by their attorneys, Messrs. McCarthy, Sample & Cook, did file with the clerk of our said circuit court their declaration, the same being in words and figures following, to wit:

Declaration.

In the Circuit Court, to the April Term, A. D. 1882.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

Debt, $25,000.00. Damages, $25,000.00.

STATE OF ILLINOIS, } *ss:*
Ford County, }

The People of the State of Illinois, plaintiffs, by James McCartney, attorney general of the State of Illinois, complain of the Wabash, St. Louis and Pacific Railway Company, defendant, of a plea that it, the said Wabash, St. Louis and Pacific Railway Company, render to the said plaintiffs, the People of the State of Illinois, the sum of twenty-five thousand dollars, lawful money of the United States, which it owes to and unjustly detains from them.

For that whereas heretofore, to wit, on the 29th day of August, A. D. 1881, at, to wit, the county of Ford aforesaid, the said
6 defendant was a railroad corporation, duly organized and incorporated under the laws of the State of Illinois, and was then and there owning and operating a certain railroad lying partly within the State of Illinois, and running from Peoria, in the county of Peoria, in the State of Illinois, eastward through said county of

Ford and through the stations of Gilman and Sheldon, in Iroquois county, Illinois, to Toledo, in the county of Lucas and State of Ohio, commonly known as the Wabash, St. Louis & Pacific railroad, and was then and there doing business as a common carrier of freight and passengers upon and over said railroad.

And afterwards, to wit, on the day and year aforesaid, to wit, at the county of Peoria aforesaid, the said defendant, at the request of Joseph Elder and D. McKinney, partners doing business under firm name of Elder & McKinney, and residents and citizens of said State of Illinois, carried and transported eastward upon and over the said line of railroad owned and operated by it as aforesaid, and upon and over railroads connected with said defendant's, for said Elder & McKinney, from Peoria aforesaid, a station upon said railroad, through said Gilman, to New York city, in the State of New York, a large quantity of freight, to wit, one car-load of corn of a great weight, to wit, of the weight of twenty-six thousand pounds, of the goods and chattels of said Elder & McKinney; and that defendant afterwards, to wit, on the day and year aforesaid, at, to wit, the county of Peoria aforesaid, charged, demanded, received, and collected of and from said Elder and McKinney, as and for said defendant's entire toll and compensation for the said carriage and transportation of said one car-load of corn upon and over said railroad and said connecting lines of railroad from said Peoria to said New York city, a large sum of money, to wit, the sum of thirty-nine dollars.

And afterwards, to wit, on the same day and year last aforesaid, at, to wit, the county of Iroquois aforesaid, the said defend-
7 ant, at the request of Isaac Bailey and F. O. Swannell, partners as Bailey & Swannell, and residents of said county, carried and transported for said Bailey & Swannell eastward, upon and over said line of railroad owned and operated by the said defendant as aforesaid, and upon some other lines of railroad connected therewith, over which said corn was transported from Gilman aforesaid, in the county of Iroquois and State of Illinois, a station upon said railroad, to New York city, in the State of New York, a certain other large quantity of freight, to wit, one car-load of oil-cake of a great weight, to wit, of the weight of twenty-six thousand pounds, of the goods and chattels of said Bailey & Swannell; and that defendant afterwards, to wit, on the same day and year aforesaid, at, to wit, the county of Iroquois aforesaid, charged, demanded, received, and collected of and from said Bailey & Swannell, as and for said defendant's toll and compensation for the said transportation and carriage of said one car-load of oil-cake last aforesaid upon and over its said railroad and said connecting lines of railroad from said Gilman to said New York city, a large sum of money, to wit, the sum of sixty-five dollars, which the said Bailey & Swannell then and there paid under protest to defendant for such carriage and transportation of said one car-load of oil-cake last aforesaid from Peoria aforesaid to said New York city as aforesaid.

And plaintiffs aforesaid aver that said goods and chattels, oil-cake, last aforesaid, carried and transported by said defendant as aforesaid, was of like quantity and of the same class of freight as the freight first aforesaid, to wit, the one car-load of corn carried and trans-

ported by said defendant as aforesaid, and was carried and transported, to wit, at the same time and in the same direction and over the same lines of railroad by said defendant as said car-load of corn hereinbefore mentioned.

And the plaintiffs further aver that the distance over and upon the line of said defendant's railroad over and upon which said corn was carried and transported from said Peoria eastward to Sheldon, a station on line of said railroad, the eastern boundary of the State of Illinois is, to wit, one hundred and nine miles; and that the distance from said Gilman, a station upon the line of said railroad, over and upon the line of said railroad over and upon which said car load of oil cake was carried and transported to said station of Sheldon, near the eastern boundary of said State, is only, to wit, twenty-three miles, and that the distance from said Gilman to said New York city, upon the route or railroads over and upon which said goods and chattels, oil-cake, aforesaid, were carried and transported, is less than the distance from said Peoria to the city of New York aforesaid, upon the route or railroads over and upon which said goods and chattels, corn, were transported, by eighty-six miles.

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And the plaintiffs further aver that the said defendant's rate of freight so charged, collected, and received, as aforesaid, for the carriage and transportation of said car-load of corn from Peoria aforesaid to said city of New York was only fifteen cents per 100 pounds per car-load, making the sum, to wit, of thirty nine dollars aforesaid; and that the said defendant's rate of freight so charged, collected, and received as aforesaid for the carriage and transportation of said car-load of oil-cake from Gilman aforesaid to said New York city, a less distance, was twenty-five cents per 100 pounds per car-load, making, to wit, the sum of sixty-five dollars aforesaid.

And the plaintiffs further aver that the said defendant made, demanded, collected, and received, to wit, the same proportionate discrimination in the said rates of freight for the transportation of said goods and chattels, to wit, said oil-cake and corn, upon and over its line of railroad in the State of Illinois that was made, demanded, collected, and received as heretofore alleged for said transportation between said Peoria and New York city and said Gilman and New York city, whereby and by means of the premises aforesaid the plaintiffs aver that the said defendant has been guilty of making an unjust discrimination in the rates of freight in the carriage and transportation of said goods and chattels, to wit, one car-load of corn and one car-load of oil-cake, aforesaid, to the great injury of the citizens of said State and contrary to the form of the statutes of said State in such cases made and provided, and against the peace and dignity of the people of the State of Illinois, whereby an action hath accrued unto the said plaintiffs to have and demand of and from the said defendant the sum of five thousand dollars, parcel of the said sum above demanded.

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JAS. McCARTNEY,
Att'y Gen'l.

A. SAMPLE,
Of Counsel for R. R. & W. H. Com'rs.

And whereas, also, heretofore, to wit, on the 29th day of August, A. D. 1881, at, to wit, the county of Ford aforesaid, the said defendant was a railroad corporation, incorporated in the State of Illinois as aforesaid, then and there owning and operating a certain railroad lying partly within the State of Illinois and running from Peoria, in the county of Peoria, in the State of Illinois, through Gilman, in the county of Iroquois and State of Illinois, passing eastward through said State and through the State of Indiana and partly through the State of Ohio to Toledo, in said last-named State, commonly known as the Wabash, St. Louis and Pacific railroad, and was then and there doing business as a common carrier of freight and passengers upon and over said railroad; and afterwards, to wit, on the day and year aforesaid, to wit, at the county of Peoria aforesaid, the said defendant, at the request of Joseph Elder and D. McKinney, partners doing business under the firm name of Elder & McKinney,
10 residents and citizens of Illinois, agreed with them to carry and transport upon and over the said line of railroad owned and operated by it as aforesaid and upon other lines of railroad extending from its terminus Toledo, as aforesaid, to New York city from Peoria aforesaid, a station upon said railroad, to said New York city, in the State of New York, a large quantity of freight, to wit, one other car-load of corn of a great weight, to wit, of the weight of twenty-six thousand pounds, of the goods and chattels of said Elder and McKinney, and that defendant afterwards, to wit, on the day and year aforesaid, at, to wit, the county of Peoria aforesaid, charged, demanded, received, and collected of and from said Elder & McKinney, at the rate of 15 cents per 100 pounds per car-load, as and for defendant's toll and compensation for the said carriage and transportation of said one car-load of corn upon and over said railroad of said defendant and said other lines of railroad from said Peoria to said city of New York, making in all a large sum of money, to wit, the sum of thirty-nine dollars.

And afterwards, to wit, on the same day and year last aforesaid, at, to wit, the county of Iroquois aforesaid, the said defendant, at the request of Isaac Bailey and F. O. Swannell, partners as Bailey and Swannell, residents and citizens of said State of Illinois, carried and transported for said Bailey and Swannell upon and over said line of railroad owned and operated by the said defendant, as aforesaid, and upon and over said other lines of railroad from Gilman aforesaid, in the county of Iroquois and State of Illinois, a station upon said railroad, to said New York city, in the State of New York, a certain other large quantity of freight, to wit, one other car-load of oil-cake of a great weight, to wit, of the weight of 26,000 pounds of the goods and chattels of said Bailey and Swannell, and that defendant afterwards, to wit, on the same day and year aforesaid, at, to wit, the county of Iroquois aforesaid, charged, demanded, re-
11 ceived, and collected of and from said Bailey & Swannell, at the rate of 25 cents per hundred weight per car load, as and for said defendant's toll and compensation, for the said transportation and carriage of said one car-load of oil-cake last aforesaid upon and over its said railroad and said other lines of

railroad from said Peoria to said New York city, making a certain other large sum of money, to wit, the sum of sixty-five dollars, which the said Bailey and Swannell then and there paid to defendant for such carriage and transportation of said one car-load of oil-cake last aforesaid from Peoria aforesaid to said city of New York as aforesaid.

And plaintiffs aforesaid aver that said freight, goods, and chattels last aforesaid carried and transported by said defendant from said Gilman to said New York city as aforesaid was of like quantity and and was of the same class of freight and was carried at the same time and in the same direction and over the same railroads as the first aforesaid goods and chattels, freight, carried and transported by said defendant from said Peoria to said New York city for said Elder & McKinney as aforesaid, and that the said goods and chattels, freight, to wit, one car load of corn so carried and transported for said Elder & McKinney from said Peoria to said New York city as aforesaid, was carried a greater distance than the said goods and chattels, freight, to wit, one car load of oil-cake, so carried and transported for said Bailey & Swannell from said Gilman to said New York city as aforesaid, and the said tolls and compensation by said railroad company, defendant, charged, demanded, received, and collected of and from said Bailey & Swannell as aforesaid, as and for its toll and compensation, for carrying and transporting said goods and chattels, freight, to wit, said one car load of oil-cake, from said Gilman to said New York city as aforesaid, was a greater amount and higher rate of toll or compensation than was charged, re-
12 ceived, collected, or demanded by said defendant for carrying and transporting from said Peoria to said city of New York said other like quantity of the same class of freight in the same direction at the same time over the same railroad a greater distance as aforesaid, and exceeded the same by a great sum, to wit, the sum of ten cents for each hundred pounds for said car load of oil-cake, making an excess of, to wit, twenty-six dollars.

And the plaintiffs further aver that the distance over and upon said defendant's railroad from said Peoria to Sheldon, a station on the line of said railroad in said Iroquois county, near the eastern line of the State of Illinois, is, to wit, 109 miles, and that the distance over and upon said railroad from said Gilman to said Sheldon is only, to wit, 23 miles, whereby, and by means of all the premises aforesaid, the plaintiffs aver that the said defendant has been guilty of making an unjust discrimination in the said rates of freight for the transportation of said goods and chattels in the State of Illinois, contrary to the form of the statutes of the State of Illinois in such case made and provided and against the peace and dignity of the people of the State of Illinois, whereby an action hath accrued unto the said people of the State of Illinois to demand and have of and from the said defendant the sum of five thousand dollars other parcel of the said sum above demanded.

And whereas, also, heretofore, to wit, on the 29th day of August, A. D. 1881, at, to wit, the county of Ford aforesaid, the said defendant was a railroad corporation under the laws of the State of Illi-

nois, then and there owning and operating a certain railroad lying partly within the State of Illinois, and running from Peoria, in the county of Peoria, in the State of Illinois, eastward through Gilman, a station on said railroad in the county of Iroquois and State of Illinois, and on eastward through the State of Indiana,
13 and to Toledo, in the State of Ohio, commonly known as the Wabash, St. Louis & Pacific railroad, and was then and there doing business as a common carrier of freight and passengers upon and over said railroad.

And afterwards, to wit, on the day and year aforesaid, to wit, at the county of Peoria aforesaid, the said defendant, at the request of Joseph Elder and D. McKinney, partners as Elder & McKinney, agreed with them to carry and transport for them upon and over the said line of raildroad owned and operated by it as aforesaid, and upon and over lines of railroad (extending from said Toledo to New York city, in New York State), from Peoria aforesaid, a station upon said railroad, to New York city aforesaid, a large quantity of freight, to wit, one other car-load of corn of a great weight, to wit, of the weight of 26,000 pounds, of the goods and chattels of said Elder & McKinney, and that defendant afterwards, to wit, on the day and year aforesaid, at, to wit, the county of Peoria aforesaid, charged, demanded, received, and collected of and from said Elder & McKinney, at the rate of 15 cents per hundred pounds for said car-load, as and for said defendant's toll and compensation for the said carriage and transportation of said one car-load of corn upon and over said railroads from said Peoria to said city of New York, making a large sum of money, to wit, the sum of thirty-nine dollars.

And afterwards, to wit, on the same day and year last aforesaid, at, to, wit, the county of Iroquois aforesaid, the said defendant, at the request of Isaac Bailey & F. O. Swannell, partners as Bailey & Swannell, agreed with them to carry and transport for them upon and over said line of railroad owned and operated by the said defendant as aforesaid, and upon and over said other lines of railroad from Gilman aforesaid, in the county of Iroquois, and State of Illinois, a station upon said railroad, to New York city, in the State of New York, also a station upon one of said other lines of railroad, a
14 certain other large quantity of freight, to wit, one other car-load of oil-cake of a great weight, to wit, of the weight of 26,000 pounds, of the goods and chattels of said Bailey and Swannell, and that defendant afterwards, to wit, on the same day and year aforesaid, at, to wit, the county of Iroquois aforesaid, charged, demanded, received, and collected of and from said Bailey & Swannell, at the rate of 25 cents per hundred pounds for said car-load of oil-cake, as and for said defendant's toll and compensation for the said transportation and carriage of said one car-load of oil-cake last aforesaid upon and over its said railroad and said other lines of railroad from said Gilman to said New York city, making a certain other large sum of money, to wit, the sum of sixty-five dollars, which the said Bailey & Swannell then and there paid to defendant for such carriage and transportion of said one car-load of oil-cake last aforesaid from Gilman aforesaid to said New York city as aforesaid.

And the plaintiffs aver that said car-load of corn was transported 86 miles further in the State of Illinois than said car-load of oil-cake.

And plaintiffs aforesaid aver that said one car-load of oil-cake, freight, goods, and chattels last aforesaid, carried and transported by said defendant from said Gilman to said New York city as aforesaid, was of like quantity, and was of the same class of freight, and was carried at the same time and in the same direction and over the same railroads as the first aforesaid goods and chattels, freight, carried and transported by said defendant from said Peoria to said New York city for said Elder & McKinney as aforesaid, and that the said goods and chattels, freight, to wit, one car-load of corn, so carried and transported for said Elder & McKinney from said Peoria to said New York city as aforesaid, was carried a greater distance, to wit, 86 miles
15 greater than the said goods and chattels, freight, to wit, one car-load of oil-cake, carried and transported for said Bailey & Swannell from said Gilman to said New York city as aforesaid, and the said tolls and compensation by said railroad company, defendant, charged, demanded, received and collected of and from said Bailey & Swannell as aforesaid, as and for its toll and compensation for carrying and transporting said goods and chattels, freight, to wit: Said one car-load of oil-cake from said Gilman to said New York city as aforesaid, was a greater amount and higher rate of toll, or compensation, than was charged, received, collected or demanded by said defendant for carrying and transporting from said Peoria to said New York city said other like quantity of the same class of freight in the same direction, at the same time, over the same railroad, a greater distance as aforesaid, and exceeded the same by a great sum, to wit, the sum of ten cents per 100 pounds, making, to wit, the sum of twenty-six dollars, whereby the defendant has been guilty of making unjust discriminating charges in the rates of freight in the State of Illinois, contrary to the form of the statutes State of Illinois, in such case made and provided, and against the peace and dignity of the people of the State of Illinois, whereby an action hath accrued unto the said people of the State of Illinois to demand and have of and from the said defendant the sum of five thousand dollars, other parcel of the said sum above demanded.

And whereas, also, heretofore, to wit, on the 29 day of August, A. D. 1881, at, to wit, the county of Ford aforesaid, the said defendant was a railroad corporation, created as aforesaid, then and there owning and operating a certain railroad lying partly within the State of Illinois, and running from Peoria, in the county of Peoria, in the State of Illinois, through Gilman and Sheldon, in the county of Iroquois and State of Illinois, and on the eastward through the State
16 of Indiana to Toledo, in the State of Ohio, commonly known as the Wabash, St. Louis & Pacific railroad, and was then and there doing business as a common carrier of freight and passengers upon and over said railroad, and afterwards, to wit, on the day and year aforesaid, to wit, at the county of Peoria aforesaid, the said defendant, at the request of Joseph Elder and D. McKinney, partners as Elder & McKinney, citizens and residents of said State,

carrried and transported upon and over the said line of railroad, owned and operated by it as aforesaid, for said Elder & McKinney, from Peoria aforesaid, a station upon said railroad, to Toledo aforesaid, another station upon said railroad, and caused to be transported from said Toledo upon other and connecting lines of railroad to New York city, in the State of New York, a large quantity of freight, to wit: One other car-load of corn of a great weight, to wit, of the weight of 26,000 pounds of the goods and chattels of said Elder & McKinney, and that defendant afterwards, to-wit, on the day and year aforesaid, at, to wit, the county of Peoria aforesaid, charged, demanded, received and collected of and from said Elder & McKinney, at the rate of 15 cents per hundred weight, as and for said defendant's toll and compensation for the said carriage and transportation of said one car-load of corn upon and over said railroads from said Peoria to said New York city, making a large sum of money, to wit, the sum of thirty-nine dollars.

And afterwards, to wit, on the same day and year last aforesaid, at, to wit, the county of Iroquois, aforesaid, the said defendant, at the request of Isaac Bailey and F. O. Swannell, partners as Bailey & Swannell, aforesaid, carried and transported for said Bailey & Swannell, upon and over said line of railroad, owned and operated by the said defendant as aforesaid, from Gilman aforesaid, in the county of Iroquois and State of Illinois, a station upon said railroad, to Toledo aforesaid, in the State of Ohio, also a station upon said railroad, and caused to be carried and transported from said Toledo upon other and connecting lines of railroad to New York city aforesaid,
17 a certain other large quantity of freight, to wit: One car-load of oil-cake of a great weight, to wit, of the weight of 26,000 pounds of the goods and chattels of said Bailey & Swannell, and that defendant afterwards, to wit, on the same day and year aforesaid, at, to wit, the county of Iroquois aforesaid, charged, demanded, received and collected, of and from said Bailey & Swannell, at the rate of 10 cents per hundredweight, as and for said defendant's toll and compensation for the said transportation and carriage of said one car-load of oil-cake last aforesaid, from said Gilman to said Sheldon, a station on the line of said railroad, and a distance of 23 miles from said Gilman and from said Sheldon to said New York city, at the rate of 15 cents per hundredweight, making a certain large sum of money, to wit, the sum of sixty-five dollars, which the said Bailey & Swannell then and there paid to defendant for such carriage and transportation of said one car-load of oil-cake last aforesaid, from Gilman aforesaid, to said New York city as aforesaid.

And plaintiffs aforesaid aver that said one car-load of oil-cake, freight, goods, and chattels last aforesaid, carried and transported by said defendant from said Gilman to said New York city as aforesaid, was of like quantity, and was of the same class of freight, and was carried at the same time and in the same direction, and over the same railroad, as the first aforesaid goods and chattels, freight, carried and transported by said defendant from said Peoria to said New York city for said Elder & McKinney as aforesaid, and that the said goods and chattels, freight, to wit, one car load of corn carried and

transported for said Elder & McKinney from said Peoria to said New York city as aforesaid was carried a greater distance than the said goods and chattels, freight, to wit, one car-load of oil-cake carried and transported for said Bailey & Swannel from said Gilman
18 to said New York city as aforesaid, and the said tolls and compensation by said Railroad Company, defendant, charged, demanded, received, and collected of and from said Bailey & Swannell, as aforesaid, as and for its tolls and compensation for carrying and transporting said goods and chattels, freight, to wit, said one car-load of oil-cake from said Gilman to said New York city as aforesaid, was a greater amount and higher rate of toll or compensation than was charged, received, collected, or demanded by said defendant for carrying and transporting from said Peoria to said New York city said other like quantity of the same class of freight in the same direction, at the same time, over the same railroad a greater distance as aforesaid, and exceeded the same by a great sum, to wit, the sum of ($26.00) twenty-six dollars.

And the plaintiffs further aver that the distance from said Peoria to said Sheldon is 109 miles, and that said one car-load of corn was carried and transported 86 miles further in the State of Illinois upon and over said defendant's line of railroad than said car-load of oil-cake was carried and transported in said State, whereby and by means of the premises aforesaid the plaintiffs aver that the said defendant has been guilty of making unjust discrimination in the rates of freight for the carriage and transportation of said property in the State of Illinois, contrary to the form of the statutes of the State of Illinois in such case made and provided, and against the peace and dignity of The People of the State of Illinois, whereby an action hath accrued unto the said People of the State of Illinois to demand and have of and from the said defendant the sum of five thousand dollars, other parcel of the said sum above demanded.

JAMES McCARTNEY, *Att'y Gen'l.*
A. SAMPLE,
F. L. COOK, *State's Att'y,*
Att'ys for People.

19 And whereas, also, heretofore, to wit, on the 29th day of August, A. D. 1881, at, to wit, the county of Ford aforesaid, the said defendant was a railroad corporation, then and there owning and operating a certain railroad lying partly within the State of Illinois and running from Peoria, in the county of Peoria, in the State of Iilinois, to Sheldon, in the county of Iroquois and State of Illinois, commonly known as the Wabash, St. Louis and Pacific railroad, and was then and there doing business as a common carrier of freight and passengers upon and over said railroad; and afterwards, to wit, on the day and year aforesaid, to wit, at the county of Peoria aforesaid, the said defendant, at the request of Joseph Elder and D. McKinney, partners as Elder & McKinney, citizens & residents of said State, carried and transported upon and over the said line of railroad owned and operated by it as aforesaid for said Elder & McKinney, from Peoria aforesaid, a station upon said rail-

road, to Sheldon aforesaid, another station upon said railroad, a large quantity of freight, to wit, one other car-load of corn of a great weight, to wit, of the weight of 26,000 pounds of the goods and chattels of said Elder & McKinney; and that defendant afterwards, to wit, on the day and year aforesaid, at, to wit, the county of Peoria aforesaid, charged, demanded, received, and collected of and from said Elder & McKinney at the rate of $4\frac{8}{10}$ cents per hundredweight as and for said defendant's toll and compensation for the said carriage and transportation of said one car-load of corn upon and over said railroad from said Peoria to said Sheldon, making a large sum of money, to wit, the sum of twelve & $\frac{48}{100}$ dollars; and afterwards, to wit, on the same day and year last aforesaid, at, to wit, the county of Iroquois aforesaid, the said defendant, at the request of Isaac Bailey & F. O. Swannell, partners as Bailey & Swannell, upon and over said line of railroad owned and operated by the said de-
20 fendant as aforesaid, from Gilman, in the county of Iroquois and State of Illinois, a station upon said railroad, to Sheldon aforesaid, in the State of Illinois, also a station upon said railroad, a certain other large quantity of freight, to wit, one other car-load of oil cake of a great weight, to wit, of the weight of 26,000 pounds, of the goods and chattels of said Bailey & Swannell; and that defendant, afterwards, to wit, on the same day and year aforesaid, at, to wit, the county of Iroquois aforesaid, charged, demanded, received, and collected of and from said Bailey & Swannell at the rate of 10 cents per hundredweight, as and for said defendant's toll and compensation, for the said transportation and carriage of said one car-load of oil-cake last aforesaid upon and over its said railroad from said Gilman to said Sheldon, making a certain other large sum of money, to wit, the sum of twenty-six dollars, which the said Bailey & Swannell afterwards, to wit, then and there, paid to defendant for such carriage and transportation of said car-load of oil-cake last aforesaid from Gilman aforesaid to said Sheldon as aforesaid; and plaintiffs aforesaid aver that said car-load of oil-cake, freight, goods, and chattels last aforesaid, carried and transported by said defendant from said Gilman to said Sheldon as aforesaid, was of like quantity and was of the same class of freight and was carried at the same time and in the same direction and over the same railroad as the first aforesaid goods and chattels, freight, carried and transported by said defendant from said Peoria to said Sheldon for said Elder & McKinney as aforesaid; and that the said goods and chattels, freight, to wit, one car-load of corn, so carried and transported for said Elder & McKinney from said Peoria to said Sheldon as aforesaid, was carried, to wit, 86 miles, a greater distance than the said goods and chattels, freight, to wit, one car-load oil-cake so carried and transported for said Bailey & Swannell from said Gilman to said Sheldon as afore-
21 said, and the said tolls and compensation by said railroad company, defendant, charged, demanded, received, and collected of and from said Bailey & Swannell, as aforesaid, as and for its toll and compensation for carrying and transporting said goods and chattels, freight, to wit, said car-load of oil-cake, from said Gilman to said Sheldon as aforesaid, was a greater amount and higher rate

of toll or compensation than was charged, received, collected, or demanded by said defendant for carrying and transporting from said Peoria to said Sheldon said other like quantity of the same class of freight in the same direction at the same time over the same railroad a greater distance, as aforesaid, and exceeded the same by a great sum, to wit, the sum of thirteen & $\frac{52}{100}$ dollars, whereby and by means of the premises aforesaid the plaintiffs aver that said defendant has been guilty of making an unjust discrimination in the rates of freight for the transportation of property in the State of Illinois, contrary to the form of the statutes of the State of Illinois in such case made and provided, and against the peace and dignity of the people of the State of Illinois, whereby an action hath accrued unto the said people of the State of Illinois to demand and have of and from the said defendant the sum of five thousand dollars, other parcel of the said sum above demanded.

JAMES McCARTNEY, *Att'y Gen'l,*
A. SAMPLE, *Att'y, &*
F. L. COOK, *State's Att'y,*
Att'ys for People.

And afterwards, on, to wit, April 3d, 1882, the Wabash, St. Louis and Pacific Railway Company, by F. T. Hughes & H. S. Greene, its attorneys, did file with the clerk of our said circuit court their demurrer, the same being in words and figures following, to wit:

22 *Demurrer to Declaration.*

In the Circuit Court, Ford County. April Term, A. D. 1882.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

Debt.

And the defendant, by F. T. Hughes, its attorney, comes and defends, &c., when, &c., and says that the said declaration and each count thereof, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain her said action, and that it, the defendant, is not bound by law to answer the same, nor each nor any count thereof, and this it is ready to verify; wherefore, for want of a sufficient declaration in this behalf, the defendant prays judgment, and that the plaintiff may be barred from maintaining her aforesaid action, &c.

F. T. HUGHES,
H. S. GREENE,
Att'ys for Defendant.

And afterwards, to wit, December 7th, A. D. 1882, said defendant, by its said attorneys, did file with the clerk of our said circuit court their certain pleas, the same being in words and figures following, to wit:

Pleas.

In the Circuit Court of Ford County, Illinois. December Term, A. D. 1882.

WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Defendant,
ads.
THE PEOPLE OF THE STATE OF ILLINOIS.

23 1st Plea. The said defendant, by its attorneys, comes and defends the wrong and injury when, &c., and says that it is not indebted and does not owe to plaintiffs in the said several sums of money in the plaintiffs' declaration mentioned, nor any nor either of them, nor any part thereof, in manner and form as the said plaintiffs have in their said declaration complained against it; and this the defendant puts itself upon the country.

F. T. HUGHES &
H. S. GREENE,
Att'ys for Defendant.

2nd Plea. And for further plea in this behalf the defendant, by its attorneys, says *actio non*, because it says that the rates of toll or compensation specified in said plaintiff's declaration and for charging and collecting which said action was brought against the defendant, were, in fact, so charged and collected for services rendered under entire agreements, and undertaking to transport freight from Gilman, in the State of Illinois, to New York city, in the State of New York; and that in such undertakings and agreements the portions of such services rendered, or to be rendered, within the State of Illinois were not apportioned or separated from said entire services.

And the defendant avers that said action is founded solely upon the supposed authority of a certain act of the General Assembly of the State of Illinois, approved May 2d, 1871, entitled, "An act to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freight on railroads in this State, and to prevent the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to repeal an act entitled An act to prevent unjust discrimination and extortion in the rates to be charged by the different railroads in the State for transportation of freight on said roads, approved April 7th, 1871.

24 And the defendant further avers that, said services having been rendered, as aforesaid, under entire agreements and undertakings to transport said freight from within the State of Illinois to the State of New York aforesaid, the said act of the General Assembly aforesaid does not affect or control or relate to the same, but, on the contrary, such transportation being among the States, falls within the operation of and is wholly controlled by the terms of the third clause of section eight of article one of the Constitution of the United States, and the defendant sets up and relies upon said clause of the Constitution of the United States as a complete defense and protection in said action.

All of which the defendant is ready to verify; wherefore it prays judgment.

F. T. HUGHES,
H. S. GREENE,
For Def'd't.

And afterwards, on, to wit, Dec. 7th, 1882, said plaintiff, by its said attorneys, did file with the clerk of our said circuit court their *similiter*, the same being in words and figures following, to wit:

Similiter.

STATE OF ILLINOIS, } ss:
Ford County. }

In the Circuit Court, to the Dec. Term, 1882.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } No. 3565.

Action. Debt.

And the plaintiff, as to the plea of the defendant by it first
25 above pleaded, and whereof it has put itself upon the country, does the like.

JAMES McCARTNEY,
Att'y General.
A. SAMPLE,
Of Counsel for the R. R. & W. Com'rs.

And afterwards, on, to wit, the day and year last aforesaid, the said plaintiff, by A. Sample, its said attorney, comes and files with the clerk of our said court their demurrer to defendant's 2nd plea, said demurrer being in words and figures following, to wit:

Demurrer to Special Plea.

In the Circuit Court, to the Dec. Term, 1882.

STATE OF ILLINOIS, } ss:
Ford County, }

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } No. 3565.

And the plaintiff, as to the plea of the defendant, by it secondly above pleaded, says that the same and the matters therein contained in manner and form as the same are above pleaded, are not sufficient in law to bar the plaintiff from having their aforesaid action, and that the plaintiff is not bound by law to answer the same; and this the plaintiff is ready to verify; wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment and their damages to be adjudged to them.

JAMES McCARTNEY, *Att'y Gen'l.*
A. SAMPLE,
Of Counsel for R. & W. Com'rs.

And afterwards, to wit, on the 23rd day of December, A. D. 1882, there was filed with the clerk of our circuit court the bill of exceptions, the same being in words and figures following, to wit:

26 *Bill of Exceptions.*

STATE OF ILLINOIS, } ss:
Ford County, }

In the Circuit Court, to the Dec. Term, 1882.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } No. 3565.

Be it remembered that on the trial of this cause at the present term of this court, a jury was waived by agreement of the parties hereto and trial had by this court.

The plaintiff, to maintain the issues on its part, gave in evidence the following stipulation:

(Here insert the stipulation.)

Debt.

STATE OF ILLINOIS, } ss:
Ford County, }

In the Circuit Court, to the Dec. Term, 1882.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } No. 3565.

For the purpose of the trial of said cause and to save the taking of evidence and the making of proof therein, it is hereby agreed on the part of the defendant that the allegations and averments in the first count of said declaration are true, execpt that part of the said count which avers that the same proportional discrimination was made in the transportation of said property—oil-cake and
27 corn—in the State of Illinois, that was made between Peoria and New York city and Gilman and New York city, which averment is not admitted because the defendant claims that is an inference from the fact that the rate charged in each case of said transportation of oil-cake and corn were through rates, but it is admitted that the said averment is a proper one.

JAMES McCARTNEY, *Att'y Gen'l.*
A. SAMPLE,
Of Counsel for the R. R. Com'rs, and for Pl'ff.
H. S. GREEN, & F. T. HUGHES,
For Defendants.

Which was all the evidence offered in the case; and thereupon the defendant submitted to the court in writing the following propositions, and asked the court to hold said propositions as law in the decision of said cause, and to mark each of said propositions "Held."

(Here copy propositions submitted to the court by defendant.)

The court holds as law that as the tolls or rates of compensation charged and collected by the defendant, in the instance in question, were for transportation service rendered in transporting freight from a point in the State of Illinois to a point in the State of New York under an entire contract or undertaking to transport such freight the whole distance between such points; that the act of the General Assembly of the State of Illinois, approved May 2d, 1873, entitled "An act to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freight on railroads in this State, and to punish the same, and prescribe a mode of procedure and rules of evidence in relation thereto, and to
28 repeal an act entitled 'An act to prevent unjust discrimination and extortion in the rates to be charged by the different railroads in this State for the transportation of freight on said roads,' approved April 7th, 1871," does not apply to or control such tolls and charges, nor can the defendant be held liable in this action for the penalties prescribed by said act. Refused.

The court further holds as law that said act in relation to extortion and unjust discrimination cannot apply to transportation service rendered partly without this State, and consisting of the transportation of freight from within the State of Illinois to the State of New York, and that said act cannot operate beyond the limits of the State of Illinois. Refused.

The court further holds as matter of law that the transportation in question falls within the proper description of "commerce among the States," and as such can only be regulated by the Congress of the United States under the terms of the third clause of section eight of article one of the Constitution of the United States. Refused.

That the penalties sued for in this action could only be imposed under proper statutory authority; and such authority not being found, the law is for the defendant. Refused.

But the court refused to hold said propositions as law in the decision of said cause, and marked each of the same "Refused," to which ruling and action of the court the defendant then and there excepted.

And the court, having heard the arguments of counsel herein and considered said cause, found the issues for the plaintiffs and gave judgment against the defendant, to the rendition of which judgment the defendant then and there excepted, and the defendant
29 then ard there moved the court to set aside said judgment and grant a new trial in said cause.

(Here insert motion.)

No motion for new trial was filed, nor is among the files in my office.

WEAVER WHITE,
Circuit Clerk.

Which motion the court overruled and the defendant then and there excepted.

And now the defendant presents this, its bill of exceptions, and prays that the same be signed and sealed, and the same is done accordingly.

O. T. REEVES, *Judge.* [SEAL.]

And afterwards, to wit, December 23rd, A. D. 1882, there was filed with the clerk of our said circuit court another certain bill of exceptions, the same being in words and figures following, to wit:

Bill of Exceptions.

In the Ford County Circuit Court, Illinois. April Term, 1882.

THE PEOPLE OF THE STATE OF ILLINIOS
vs.
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY.

Be it remembered, that on the 17th day of April, 1882, one of the regular days of said term, the defendant filed its petition for the removal of said cause to the circuit court of the United States
30 for the southern district of Illinois, which petition is in words and figures following, to wit:

(Here copy petition.)

Petition for Removal to the Circuit Court of the United States for the Southern District of Illinois.

In the Circuit Court of Ford County, in the State of Illinois. April Term, A. D. 1882.

THE PEOPLE OF THE STATE, Plaintiff.
against
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY, Defendants.

The Wabash, St. Louis and Pacific Railway Company presents this, its petition, to said honorable court and respectfully shows that your petitioner is a body corporate organized and existing under and by virtue of the laws of the State of Illinois, and was formed in part by consolidation with the Wabash Railway Company, of Indiana, a body corporate, formerly existing under the laws of the State of Indiana, and with the Wabash Railway Company of Ohio, a body corporate formerly existing under the laws of the State of Ohio; that the petitioner, in its consolidated character, owns and operates a line of railroad extending continuously from Peoria, in Peoria county, to the State line of Indiana, and through the town of Gilman, in the county of Iroquois in the State of Illinois aforesaid; and said company also owns and operates a line of railroad extending through a greater part of the State of Illinois and Indiana to Toledo, in the State of Ohio, with a branch to the city of Detroit, in the State of Michigan. But your peti-
31 tioner does not own or operate any line of railroad extending east, or in any easterly direction from said last-named cities, nor does your petitioner own, operate, or control any line of railroad extending to any point in the State of New York.

Your petitioner further shows, that said suit is now pending and was commenced to the present term of this court, was brought against your petitioner by the people of the State of Illinois to recover a large amount of penalties for having, as alleged, in the year A. D. 1881, charged, demanded, and received, from certain persons named in the declaration in said cause, as tolls for transporting certain freight from Gilman aforesaid, on said railroad in Iroquois county, aforesaid, to New York city in the State of New York, while your petitioner, as alleged, charged certain other persons in said declaration named, a less sum for transporting like quantities of the same class of freight from Peoria, in the State of Illinois, to New York city, in the State of New York, being a greater distance in the same direction.

Your petitioner would further show that said suit was brought by the attorney general of said State on behalf of the people of said State, under the alleged authority of an act of the General Assembly of the State of Illinois, approved May 2, 1871, entitled "An act to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freight on railroads in this State and to punish the same and prescribe a mode of procedure and rules of evidence in relation thereto, and to repeal an act entitled "An act to prevent unjust discrimination and extortion in the rates to be charged by the different railroads in this State for the transportation of freights on said roads, approved April 7th, 1871."

Petitioner would further show that by the provisions of said act certain penalties are imposed upon any railroad corporation or other persons or corporation owning or operating a railroad within
32 the State of Illinois who shall charge, accept, or receive as a toll or compensation for transporting freight over such railroad, the same or a greater amount of rate than that which such persons or corporations shall charge, accept or receive for transporting the same quantity and class of freight a greater distance in the same direction over such railroad.

Your petitioner would further show, that by the terms of the third clause of section eight of article 1 of the Constitution of the United States the power to regulate commerce with foreign nations and among the several States is vested in the Congress of the United States, and as this petitioner is advised, and believes, and so charges, is exclusively vested in said Congress, and that any construction of the act of the Legislature of the State of Illinois, aforesaid, which would cause the same to apply to the rates charged by this petitioner *from* transporting freight from any point within the State of Illinois to New York city, in the State of New York, would be in violation of the Constitution of the United States. This petitioner alleges that the legislative authority of the State of Illinois does not and cannot extend to the rates charged for transporting freight between any point or points in Illinois, and any point or points beyond the limits of said State.

Your petitioner alleges that the said action or suit arises under the Constitution of the United States and the determination thereof

necessarily involves the construction of the clause thereof, before referred to.

And petitioner relies upon, and will set up, in its defense in said suit the aforesaid provisions of the Constitution of the United States, and will so set up and charge as a defense to each and every count in said declaration that the alleged contracts and agreements for the carrying of said freight were each and every of them contracts
33 and agreements for the carrying of such freight from the points named within the State of Illinois to the city of New York, in the State of New York, and none other. Your petitioner further alleges that the matter and amount in dispute in said suit exceeds (exclusive of costs) the sum or value of five hundred dollars. Your petitioner herewith offers a bond, with good and sufficient security, for its entering in the circuit court of the United States for the southern district of Illinois, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And said petitioner prays the honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said sureties and bond, and to cause the record herein to be removed into the circuit court of the United States for the southern district of Illinois.

F. T. HUGHES,
H. S. GREEN, AND
DOYLE & MORRIS,
Attorneys for Petitioner.

In the Circuit Court. April Term, A. D. 1882.

STATE OF ILLINOIS, } ss:
Ford County, }

I, F. T. Hughes, being duly sworn, do say: That I am one of the attorneys for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein are true, as I verily believe.

F. T. HUGHES.

Sworn and subscribed before me by the said F. T. Hughes, this 7 day of April, A. D. 1882.

W. WHITE, *Clerk.*

34 And the defendant at the same time filed with said petition a bond and affidavits, which are in the words and figures following, to wit:

(Here copy bond and affidavits.)

In the Circuit Court of Ford county, State of Illinois. April Term, A. D. 1882.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY CO., Defendant.

Know all men by these presents that we, The Wabash, St. Louis and Pacific Railway Company, as principal, and Freeman B. Morris and Robert Doyle, as sureties, are held and firmly bound unto The People of the State of Illinois in the penal sum of one thousand dollars, lawful money of the United States, for the payment of which, assigns, and the said Freeman B. Morris and Robert Doyle, and *are* Railway Company hereby binds itself, its successor, successors, and well and truly to be made, the said Wabash, St. Louis and Pacific hereby bind themselves, their heirs, executors, administrators, and assigns, the said principal and said sureties hereby binding themselves jointly and severally, yet upon these conditions: The said Wabash, St. Louis and Pacific Railway Company having petitioned the circuit court of the county of Ford, in the State of Illinois, for the removal of a certain cause therein pending, wherein The People of the State of Illinois are plaintiffs, and said Wabash, St. Louis and Pacific Railway Company is defendant, to the circuit court of the United States
35 for the southern district of Illinois: Now if the said Wabash, St. Louis and Pacific Railway Company shall enter in said circuit court of the United States for the southern district of Illinois, on the first day of the next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof the said Wabash, St. Louis and Pacific Railway Company has caused its name to be signed hereto by the third vice-president, and its corporate seal to be hereto affixed by its secretary, and said sureties have hereto affixed their hands and seals this fifth day of April, A. D. 1882.

THE WABASH, ST. LOUIS AND
PACIFIC RAILWAY COMPANY,
By JAMES F. HOW, 3*d* *Vice-Pres't.*
ROBERT DOYLE. [SEAL.]
FREE P. MORRIS. [SEAL.]

Attest:
JAMES V. HOW, *Secretary.*

Wabash, St. Louis and Pacific Railway Company, 1879.

STATE OF ILLINOIS, }
Iroquois County, } *ss:*

I, Robert Doyle, and Free P. Morris, of said county, the sureties named in the foregoing bond, being duly sworn, do depose and say:

That we are residents of the State of Illinois and property
36 holders therein; that we are worth the sum of one thousand dollars each, over and above all our debts and liabilities and exclusive of property by law exempt from execution; that we have property in the State of Illinois liable to execution of the value of more than one thousand dollars, each.

FREE P. MORRIS.
ROBERT DOYLE.

Subscribed in my presence by Robert Doyle and Free P. Morris, and by them sworn to before me, this 6th day of April, A. D. 1882.

W. H. HARRY,
Notary Public.

Real estate agent and notary public, Iroquois Co., Ill.

And the defendant then and there entered its motion for the removal of said cause as prayed in said petition; and afterwards, on the 12th day of April, 1882, one of the regular days of said term, the court overruled and denied the motion of defendant to remove said cause to said circuit court of the United States, to which ruling of the court the defendant then and there excepted; and inasmuch as the matter- herein set forth do not appear of record in said cause, the defendant presents this his bill of exceptions at the December term, 1882, of said Ford county circuit court, and asks that the same may be signed and sealed. The counsel for plaintiff objecting to the signing of this bill of exceptions because the same was not presented and signed at the April term, 1882, of said Ford county circuit court, and the court being in doubt whether or not he should sign the same against the objection of the plaintiff, signed the same, and refers the question whether the defendant is entitled to have said bill of exceptions signed at said December term, 1882, of said court to the Supreme Court, to which an appeal has been prayed & allowed in this cause.

Signed and sealed this 22 day of December, 1882.

O. T. REEVES, *Judge.* [SEAL.]

37 *Orders of Court at Ap'l Term,* 1882.

In Circuit Court, April Term, A. D. 1882.

UNITED STATES OF AMERICA, }
State of Illinois, Ford County, } *ss:*

Pleas before the Honorable Owen T. Reeves, one of the judges of the 11th judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Ford county, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Paxton, in said county, on the first Tuesday (being the fourth day) of April, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and sixth.

Present: Honorable Owen T. Reeves, one of the judges of the 11th

judicial circuit of the State of Illinois; Weaver White, clerk; France L. Cook, State's attorney; S. B. Lyman, sheriff.

Attest: WEAVER WHITE, *Clerk.*

The court was opened by due proclamation according to law.

Be it remembered that afterwards, to wit, on the sixth day of April, A. D. 1882, the same being one of the days of the regular April term, A D. 1882, of said court, and said court being duly organized and sitting in open court for the transaction of business, the following, among other proceedings, were had and entered of record by said court in words and figures following, to wit:

Debt.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,
vs.
THE WABASH, ST. LOUIS and PACIFIC RAILWAY COMPANY, Defendant. } No. 3565.

38 And now, on this day, come said plaintiffs, by Messrs. McCartney, Sample and Cook, their attorneys, and said defendant, by Messrs. Hughes and Green, its attorneys, and now said defendant, by its said attorneys, files its demurrer to plaintiffs' declaration herein.

The court was opened by due proclamation according to law.

Be it remembered that afterwards, to wit, on the seventh day of April, A. D. 1882, the same being one of the days of the regular April term, A. D. 1882, of said court, and said court being duly organized and sitting in open court for the transaction of business, the following, among other proceedings, were had and entered of record by said court in words and figures following, to wit:

Debt.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,
vs.
THE WABASH, ST. LOUIS and PACIFIC RAILWAY CO., Defendant. } No. 3565.

And now, on this day, come the respective parties hereto, by their attorneys, and said defendant, by its counsel, presents to the court its petition to transfer this cause to the circuit court of the United States for the southern district of Illinois, and the court hears arguments of counsel on the part of the said plaintiff, as well as of said defendant, as to the removal of this cause as prayed for in defendant's petition.

The court was opened by due proclamation according to law.

Be it remembered that afterwards, to wit, on the eighth day of April, A. D. 1882, the same being one of the days of the said
39 April term, A. D. 1882, of said court, and said court being duly organized and sitting in open court for the transaction of business, the following, among other, proceedings were had and entered of record by said court, in words and figures following, to wit:

Debt.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, Defendant. } 3565.

And now, on this day, come the parties hereto, by their respective attorneys, and the court being now sufficiently advised in the premises, it is ordered that the petition of said defendant for the removal of this cause to the circuit court of the United States for the southern district of Illinois be, and the same is hereby, denied. To the ruling of the court defendant, by its counsel, now excepts.

And now said plaintiffs, by their attorneys, enter a *nolle* as to the fifth count of their declaration filed in this cause.

And the court being now well advised in the premises sustains defendant's demurrer as to the other counts of the declaration in this cause. To the ruling of the court said plaintiff, by their counsel, now except and stand by their declaration herein.

And it appearing to the court that the declaration of the plaintiff, and the matters therein contained, are not sufficient in law for the plaintiff to have or maintain their aforesaid action thereof against the defendant, therefore, it is considered and adjudged by the court that the plaintiffs take nothing by their suit, and that the defendant do go thereof without day. It is further ordered and adjudged by the court that defendant do recover of and from the plaintiff its cost and charges by it about its defense in this behalf expended, to be taxed by the clerk of this court. To the judgment of the court said plaintiffs, by their counsel, except, and pray an appeal to the appellate court of the third district of the State of Illinois, which prayer is, by the court, allowed without bond.

Orders of Court at Dec. Term, 1882.

In Circuit Court, December Term, A. D. 1882.

UNITED STATES OF AMERICA,
State of Illinois, Ford County, } *ss:*

Pleas before the Honorable Owen T. Reeves, one of the judges of the eleventh judicial circuit of the State of Illinois, and sole presiding judges of the circuit court of Ford county, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Paxton, in said county, on the first Tuesday (being the fifth day) of December, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

Present: Honorable Owen T. Reeves, judge of the eleventh judicial circuit of the State of Illinois; Weaver White, clerk; France L. Cook, State's attorney; J. W. Ramsey, sheriff.

Attest: WEAVER WHITE, *Clerk.*

The court was opened by due proclamation, according to law.

Be it remembered that afterward, to wit, on the day and year last aforesaid, the same being one of the days of the regular
41 December term, A. D. 1882, of said court, and said court being duly organized and sitting in open court for the transaction of business, the following, among other, proceedings were had and entered of record by said court, in words and figures following, to wit:

Debt.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,
versus
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, Defendant. } No. 3565.

And now on this day come the plaintiff, by A. Sample, Esq'r, their attorney, and presents to the court proof of notice of the filing of mandate in this cause from the supreme court of the State of Illinois, said mandate being in words and figures following, to wit:

STATE OF ILLINOIS, SUPREME COURT, *Central Grand Division,* } *ss:*

At a supreme court begun and held at Springfield on the first Tuesday in the month of June, in the year of our Lord one thousand eight hundred and eighty-two, the same being the sixth day of June, in the year of our Lord one thousand eight hundred and eighty-two.

Present: John M. Scott, chief justice; Pinkney H. Walker, justice; Benj. R. Sheldon, justice; T. Lyle Dickey, justice; John Schofield, justice; John H. Mulkey, justice; Alfred M. Craig, justice.

42 And afterwards, to wit, on the 28th day of September, in the year of our Lord one thousand eight hundred and eighty-two, an order was made by said court in words and figures following, to wit:

Error to Ford.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

On this day come again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error. Therefore, it is considered by the court that for that error, and others in the record and proceedings aforesaid, the judgment of the circuit court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to

the circuit court for such other and further proceedings as to law and justice shall appertain. And it is further considered by the court that the said plaintiffs in error recover of and from the said defendants in error costs by them in this behalf expended, and that they have execution therefor.

I, E. A. Snively, clerk of the said supreme court, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Springfield, this
43 21st day of October, in the year of our Lord one thousand eight hundred and eighty-two.

[Seal of The Supreme Court, State of Illinois, Aug. 16, 1818.]

E. A. SNIVELY,
Clerk of Supreme Court.

And thereupon said plaintiffs, by their attorney, also presents to the court due proof of notice and application to re-docket this cause.

It is thereupon ordered by the court that this cause be reinstated and again placed upon the docket of this court; and it is done accordingly.

Be it remembered, that afterwards, to wit, on the 7th day of December, A. D. 1882, the same being one of the days of the regular December term of the circuit court of Ford county, Illinois, and said court being duly organized, and sitting in open court for the transaction of business, the following, among other proceedings, were had and entered of record by said court, in words and figures following, to wit:

Debt.

THE PEOPLE OF ILLINOIS, Plaintiff,
vs.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, Defendant. } No. 3565.

And now on this day come the plaintiff, by their said attorney, and the said defendant, by Messrs. Hughes and Greene, its attorneys, and it is now ordered by the court that the demurrer to the declaration in this cause, in obedience to the mandate of the supreme court of the State of Illinois, and the same is hereby overruled, on motion of its counsel, leave is granted defendant to plead.

Thereupon defendant pleads instanter. And now come
44 said plaintiffs, by their counsel, file their demurrer to the special plea of defendant; and the court being well advised in the premises, sustains plaintiffs demurrer to defendant's special plea.

And now said defendant stands by its special plea; and as to the said special plea of defendant, the court gives judgment for the plaintiff.

And now the parties hereto, waiving a trial by jury, submit this cause to the court on the issue herein joined. And the court

having heard all the evidence offered, the arguments of counsel for the respective parties, and being sufficiently advised in the premises, finds the issues in favor of the plaintiff and against the defendant, in the sum of one thousand dollars debt. It is therefore considered and adjudged by the court that the said plaintiff have and recover of and from said defendant the said sum of one thousand dollars, their debt aforesaid, together with their costs about their suit herein expended, to be taxed by the clerk of this court; and that they have execution therefor.

Thereupon said defendant, by its attorneys, enters its motion for a new trial; which motion, being duly considered by the court, is overruled. To the ruling of the court defendant excepts, and prays an appeal to the supreme court of the State of Illinos; which prayer is by the court allowed, conditioned on defendant filing its bond in appeal, in the sum of two thousand dollars, with Charles Ridgely as security. By consent of parties hereto, bond and bill of exceptions is to be filed, on or before twenty days from this date.

And afterwards, to wit, on the 11th day of December, 1882, the said defendant did file, in the office of the clerk of our said circuit court their certain appeal bond, the same being in words and figures following, to wit:

45 *Appeal Bond.*

Know all men by these presents that we, the Wabash, St. Louis and Pacific Railway Co., as principal, and Charles Ridgeley, as surety, are held and firmly bounden unto The People of the State of Illinois in the penal sum of two thousand ($2,000) dollars, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 9th day of December, in the year of our Lord one thousand eight hundred and eighty-two.

The condition of the above obligation is such that whereas the said People of the State of Illinois did, on the 7th day of Dec'r, A. D. 1882, at a term of the circuit court of Ford county, Illinois, holden within and for the county of Ford, obtain a judgment against the above bounden Wabash, St. Louis and Pacific Railway Company for the sum of one thousand dollars and costs of suit, from which judgment of the said court the said Wabash, St. Louis and Pacific Railway Company has prayed for and obtained an appeal to the supreme court of the State of Illinois.

Now, if the said Wabash, St. Louis and Pacific Railway Company shall duly prosecute said appeal, and shall moreover pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against the said Wabash, St. Louis and Pacific Railway Company in case the said judgment shall be affirmed, then the above obligation is to be null and void; otherwise to remain in full force and virtue.

In testimony whereof the said Wabash, St. Louis and Pacific Railway Company has caused its corporate name and seal to be hereunto

subscribed and affixed by its secretary, and the said Charles
46 Ridgely has also subscribed his name and affixed his seal hereto.

[Corporate Seal, Wabash, St. Louis and Pacific Railway Company, 1879.]

WABASH, ST. LOUIS AND PACIFIC
RAILWAY COMPANY,
By JAMES V. HOW, *Secretary.*
CHARLES RIDGELY. [SEAL.]

STATE OF ILLINOIS, }
Ford County, } *ss:*

I, Weaver White, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and complete transcript of the records and proceedings in a certain cause lately pending in our said circuit court, wherein The People of the State of Illinois were plaintiffs, and the Wabash, St. Louis and Pacific Railway Company was defendant, as the same appears from the records and files in my office now remaining.

Witness my hand and official seal this 28th day of December, A. D. 1882.

[Seal Circuit Court of Ford County, Illinois.]

WEAVER WHITE,
Circuit Clerk.

Fee, $18.00.

Assignment of Errors.

And now the plaintiff in error, by its attorneys, finds the following errors in the record:

47 The court erred, to the injury of plaintiff in error, in the following particulars:

1. In denying the petition of plaintiff in error for the removal of said cause to the circuit court of the United States.
2. In overruling demurrer of plaintiff in error to each of the first four counts of plaintiff's declaration.
3. In sustaining demurrer to special plea of plaintiff in error.
4. In refusing to hold as law in the decision of said cause each proposition presented by the plaintiff in error in writing to the court and prayed to be held as law.
5. In finding the issues for defendant in error.
6. In overruling the motion of plaintiff in error for a new trial.
7. In entering judgment for defendant in error.
8. The judgment of the court below not warranted by the law or by the evidence.

For these and other errors apparent on the face of the record, the plaintiff in error says that the judgment of the court below ought to be reversed.

H. S. GREENE, &
F. T. HUGHES,
For Plaintiff in Error.

And be it further remembered that afterwards, to wit, on the 4th day of January, A. D. 1883, the following proceedings were had in said cause:

Appeal from Ford.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 55.

48 Now on this day come the appellees herein, by Hon. James McCartney, attorney general, and moves the court to strike from the record herein the second bill of exceptions, commencing on page fifty-one of said record and ending on page sixty-two thereof; and the court, not being fully advised of and concerning the premises herein, takes said motion under advisement.

And be it further remembered that afterwards, to wit, on the 23d day of January, A. D. 1883, an order was made by said court, in words and figures as follows, to wit:

Appeal From Ford.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 55.

Now on this day come again said parties, and the court, being now sufficiently advised of and concerning the premises herein, it is ordered by the court that the motion heretofore made to strike from the record filed herein certain portions thereof be, and the same is hereby, allowed.

And be it further remembered that afterwards, to wit, on the 23d day of January, A. D. 1883, an order was made in said cause, in words and figures as follows, to wit:

Appeal From Ford.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 55.

49 On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or orders of the court for this term, and this cause coming now on to be heard, the appellant having entered motion to reverse the judgment and remand said cause, and for costs, and the appellees having entered motion to affirm the judgment herein and for costs and for procedendo, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that afterwards, to wit, on the 29th day of January, A. D. 1883, an opinion was filed in said cause in words and figures as follows, to wit:

Appeal from Ford.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 55.

PER CURIAM:

We see no reason to depart from the conclusion reached in this case when it was here before. See People *vs.* W., St. L. & P. R'y Co., 104 Ill., 476.

But to avoid misapprehension we deem it desirable to state explicitly that we disclaim any idea that Illinois has authority to regulate commerce in any other State. We understand and simply hold that, in the absence of anything showing to the con-
50 trary, a single and entire contract to carry for a gross sum from Gilman, in this State, to the city of New York implies necessarily that that sum is charged proportionately for the carriage on every part of that distance; and that a single and entire contract to carry for a gross sum from Peoria, in this State, to the city of New York implies the same thing; and that, therefore, when it is shown that there is charged for carriage upon the same line less from Peoria to New York (the greater distance) than from Gilman to New York (the less distance), and nothing is shown to the effect that such inequality in charge is all for carriage entirely beyond the limits of this State, a *prima facie* case is made out of unjust discrimination under our statute occurring within this State. We hold that the excess in the charge for the less distance presumably affects every part of the line of carriage between Gilman and the State line proportionally with the balance of the line.

The judgment is affirmed.

And be it further remembered that afterwards, to wit, on the 29th day of January, A. D. 1883, a separate opinion was filed in said cause by Mr. Justice Walker, in words and figures as follows, to wit:

Appeal from Ford.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 55.

WALKER, J.:

As this case is again before us for decision, I shall, owing to its vast importance and the disastrous and ruinous effects it must produce on our system of government, if the claim of plaintiff in error should obtain, I will add something to what I before said.
51 If such doctrines were allowed, it would be to release and entirely exempt all corporate bodies in the State from the governing or sovereign power of the State, to prevent wrong and op-

pression of the people by such bodies; it would be to hold that the State, by creating and endowing railroads with the simple and necessary power to fix charges for carrying persons and property, — the Legislature, without knowing or intending it, had sold or surrendered the governing power of the State, and such bodies are empowered to extort from the masses, annually, for all time to come, sums greater than the revenues of the Federal Government beyond fair compensation for such carriage.

If such bodies cannot be controlled to the same extent and under the same necessities for the general welfare, as by the State, as natural persons, then by some unknown means the powers of government have been subverted and the States virtually destroyed, and they have become useless and expensive appendages to our governmental system. They would become powerless to perform the functions and answer the great and all-controlling purpose of organizing government, which is to secure protection. It would undeniably — to recognize and declare such bodies above and beyond legal control; to create government agencies and instruments greater than the sovereign State and not amenable to its governing power.

Present the question as we may, whether as exempting them from such control under the fiction that the granting of the charter of plaintiff in error was a contract never to control it in its charges and never control its power to wrong and oppress the people and is protected by the obligation clause of the Constitution, or that the regulation of such charges and the prevention of extortion and unjust discrimination is a regulation of commerce among the States and is prohibited; under either claim the power of the State to protect the people from such oppression would be destroyed
52 and the power of the States destroyed. To admit either proposition must inevitably lead to this result. This, then, is the naked question to be determined.

The provision of our constitution requiring the enactment of the statute under consideration was deliberately framed, and on full consideration was ratified by the people. It was considered by both the convention and the people to be imperatively demanded in the promotion of the general welfare and to afford the people protection and security from the invasion of rights the State government was created to afford.

As we seem to forget or are drifting away from the great, plain, and never-denied, underlying, fundamental principles of our government, I may be excused in referring to some of the axiomatic principles that have been supposed to be self-evident, especially so when we are asked to disregard the plainest doctrines of our government.

I shall define a State to be the whole people embraced in a prescribed territory united into one body-politic for the purpose of mutual protection and security from wrong and violence from within and without its borders. A constitution or foundation of government embraces and declares the principles, regulates the division and the exercise of the governing powers, directs to what officers or agencies it shall be confided, and limits and controls its exercise.

In other words, it establishes the government, delegates, limits, and defines the manner in which the governing power of the State shall be exercised. And overpowering necessity compels those who frame government to confer ample power on its agencies, to enforce the protection and security for which government is instituted. And the same necessity imperatively demands that the power thus conferred shall be forever held and exercised for the purposes
53 for which it was delegated to the agencies of the government.

It is self-evident that this power must not only be preserved and exercised for the purposes for which it was delegated, but it must be defended so long as the government shall exist. Nor can the powers thus conferred be exercised for any other but the purposes for which they were delegated.

It is axiomatic that in all representave governments the sovereign or governing power belongs to and resides in the people as the source of all power; that this power is inherent, inalienable, and indestructible without the subversion or destruction of the government. This is absolutely true from its inherent nature and the purposes of such government. To surrender or sell such power to its full extent is to destroy such government. To impair or diminish the sovereign or governing power is to weaken the power, to govern the people, and to protect them in their rights, and, to that extent, defeats the purpose for which government was created and is maintained. The founders of our Government conferred powers deemed necessary to answer the purposes of its organization, and to be perpetually held, unless withdrawn by the people when exercising soyereign power.

When the State government was organized the people of the State delegated governmental powers to the officers created by the organic law to be held and exercise alone for governmental purposes. It was but a delegation of a trust, and not the title to the power. Officers or governmental agencies take no title to the power, but simply the authority to exercise it for the purposes of government. Had the framers of our State governments even imagined that it would ever be claimed that such agencies had the power to sell, surrender, impair, or diminish the power thus held in trust they would have prohibited such action in terms that none would have misunderstood.

But it was so generally and unquestionably understood that
54 government officers held nothing more than the power in trust for governmental purposes that it would have been regarded as an insult to the intelligence of the people to have inserted a provision in the fundamental law prohibiting the sale, surrender, the impairment, or diminution of the sovereign or governing power of the State. All persons having the slightest knowledge of the powers and purposes of government have always believed, and still suppose, that the power of sale or surrender cannot exist, and all persons of intelligence would be profoundly astonished to learn that a proposition so ruinous, so destructive of government, so oppressive to the people, and so violative of every principle of government had been announced by any court.

To hold that such power may be trafficked away and squandered is to suppose that those who framed the State governments were

wholly incompetent to the task, and were ignorant of the plainest principles of government. It is monstrous to suppose they, when framing a government designed to be perpetual in duration, and which they intended to and supposed they had crowned with ample power to secure the best of government, did, in fact, and without being aware of it, empower the agencies to sell the power and destroy the government they were engaged in organizing. To hold that such was their purpose is to impute to them the weakest and most puerile of purposes; it is to hold that those who framed the State governments were engaged in the idle ceremony of framing a government, and, at the same time and by the same instrument, empowering the officers created to enforce its provisions, to destroy and terminate its existence by the sale of the sovereign powers. No more monstrous constiutional heresy could be invented. It is impossible to attribute such purposes to those men. It would be to deny them ordinary intelligence. There is no language or provision of our Constitution that can be tortured into power to sell immunity from governmental control to either
55 natural [or] artificial persons. And to hold there is such power violates every known rule of interpretation and construction. It is opposed to every principle of government, is destructive of government itself, and is to exempt a portion of a community and leave them unrestrained, alone, and beyond governmental control. It would be subversion of government, order, and security. This is not the age, nor is this the country, in which to try the perilous experiment of creating highly privileged classes above and beyond the control of government, to prey upon and oppress the people, not only without, but contrary to all constitutional authority. To sell such immunities is contrary to every principle of justice, policy, fairness, reason, and equality. It violates every principle of right and of our Government.

Were the State to sell to a natural person exemption from governmental control is there in this broad land a right-thinking man that would not denounce it as a monstrous act of wrong and a flagrant violation of the fundamental law, however specific the terms of the contract, and however ample the consideration? I apprehend no one could be found so dull as not to see the monstrous violation of every principle upon which government is founded. And if it would be unjust and in violation of all principle to sell such an immunity to a natural person, in the name of reason, justice, fairness, and equality, can such a privilege be sanctioned and become just, fair, and constitutional when extended to a corporation, a mere instrument and creature of government? A natural person is an integral part of the body of persons holding, and, at will, exercising, the sovereign power of the State, and is entitled to as high consideration as a mere creature and instrument of government. It must, then, follow that if the natural person cannot be thus exempted that a corporate body cannot, as the mere instrument brought into being by and to serve the sovereign power cannot be greater,
56 or its rights more sacred than an integral part of sovereign power. It irresistibly and logically follows that the Legisla-

ture is absolutely destitute of all power to exempt persons, natural or artificial, from governmental control.

It would require no argument to prove that a contract entered into by the chief executive of a State with one of its inhabitants never to enforce the laws of the State against him would be corrupt and would forfeit his right to his office. So if a judge were to enter into a contract never to render judgment or sentence against a person. In such cases all persons would intuitively know that such contracts constituted a crime so black as to cover such officers with infamy and detestation so long as their names were remembered. Then, if to sell or to surrender the executive or judicial power is so infamous, how can the courts hold that a bargain between the Legislature and a corporation that the latter should never be controlled, but might wrong, oppress, and extort from the people without limit or control be held pure and free from the taint of corruption, and must be protected under the obligation cause. I can never believe until it shall be so decided that any court will ever hold that what is crime in, when committed by, either of two branches of government is pure, just, and right when committed by the other. It would be monstrous inconsistency for a court to hold an act perpetrated by one branch of government is corrupt, base, and criminal, but when perpetrated by another is honest, just, and legal. And the sale or surrender of governmental powers by either branch is precisely the same in principle and effect. No person can make even a plausible distinction, nor is there a particle more constitutional authority for the sale or surrender of such power by the Legislature than by the Governor or a judge.

But the journals of the legislative bodies of this country may
57 be searched in vain to find a single instance where such an exemption has been made or even been proposed. Other unauthorized and unwarranted exemptions may have been made, but the monstrous and unheard-of exemption from governmental control has never been granted or attempted. And it is impossible to believe it ever will, so long as the principles upon which our Government is based are respected that any legislative body will be found so reckless of duty as to make such a grant or exemption. It is too monstrous for intelligent belief. Nor can the courts, by mere inference, justly hold that such a purpose ever actuated such bodies in the absence of express language declaring the purpose.

Again, an attempt by force to deprive the State of governmental power is denounced as treason, and punished by the highest penalty that can be inflicted. It is the most infamous and detestable of all crimes, and is execrated by all respectable and patriotic persons. When the Legislature sells or surrenders the powers of government it destroys the government as effectually as it can be done by treason. And to part permanently with a portion of governmental power accomplishes, in part, the purposes of treason. It is a partial destruction of government. Then is it possible for a court to imply a contract for an exemption from governmental control and sustain such a contract steeped in such turpitude? Is it possible to say such a contract, violative of every principle of government, and such as,

if entered into by either of the other branches of government, would be denounced and execrated as the most infamous corruption must be protected by the obligation clause. It would seem to be impossible to maintain such a proposition or even contend for its establishment.

From our nature and environments government is a supreme necessity and never a choice. It is imperatively demanded and
58 is indispensable to the protection of life, property, and such liberty as the government accords to the governed. All persons hold their rights subject to the necessities of the general public. That is the terms upon which all hold their right to protection. It is forcibly expressed by the maxim "*salus populi est suprema lex.*" Government must be armed with all necessary power to protect the governed, nor can that, the great primary object of all government, be defeated, except by overpowering force. Nor can the Legislature confer power or exemptions on natural or artificial persons that will defeat the great purpose of the organization of government. It is the inherent and inalienable right of every person in our Government to equal protection from wrong, injustice, and oppression, and so long as they are worthy of citizenship the people will maintain that right in one mode or another. They may be deprived of the right for a time, but never permanently. The people will never sanction a doctrine so unjust, so unequal, and so monstrous that the legislature may sell exemptions from governmental restraint, whether to natural or artificial persons.

We may search the charter in vain to find anything that exempts the company from the restraining power of the State in the interest of good government. It is true that the government created it a common carrier and empowered it to charge for such services. It thereby became endowed with the attribute or faculty to contract in reference to its business. A natural person is born with the same faculty, but it has in all governments been controlled, limited, and restricted by the law-making power from the dawn of history and probably before. Although the power of natural persons to contract is conferred in its amplest form by nature, government has ever exercised the power to limit and restrain or even prohibit its exercise for the general welfare. Government, in all ages, and
59 among all people, has prohibited all persons from contracting until they arrive at a specified age. It has, notwithstanding all persons are endowed with the faculty of contracting, in all governments where our language prevails, absolutely prohibited married women from contracting. All persons are endowed by nature with power to contract for any rate of interest they choose, and yet in most civilized and Christian governments the right has been limited to a maximum rate. Men have been deprived of their natural right to contract for more than the prices fixed by law for food, for drayage, for hack-hire, for toll on roads, bridges, and ferries. They have been prohibited from the purchase of lands because of alienage; and citizens have been prohibited from its purchase by verbal contract; and it has been provided the title shall not pass unless conveyed in writing in a prescribed form, and the title thus

transferred shall be defeated unless the deed be recorded in a specified manner or a prescribed time; and the right of natural persons to contract has been prohibited when the subject of the contract is declared immoral, criminal, or contrary to public policy; and the power of the Legislature to control the exercise of the natural right to contract has never been questioned by any court. It has been conceded to be the exercise of just legislative power. Then on what principle or for what reason shall we except corporate bodies from the like legislative control? It is neither required nor authorized, but it is prohibited by the Constitution. It was not intended by the General Assembly when it granted the charter for the organization of this company. Those named in the charter to organize the body did not suppose that such an immunity was granted; nor did the officers of the company, after it was organized, suspect they had made such a contract with the State. If a contract was made none of the parties to or connected with it ever intended to enter
60 into such a contract. If there was such a contract it was made in despite of all language necessary to a contract, against the intention of the parties, and in defiance of every rule of the law.

Can any sane man believe that any Legislature ever organized in the Union was so reckless of their duty and of the powers of government as to have granted a single charter had they supposed, on the organization of the company, it would not be amenable to the power of government to the same extent, for the same reasons and purposes that natural persons may be governed and controlled? It is impossible to believe that such a legislative body ever existed or ever will.

Government existed before corporations were organized. They were created as governmental agencies or instruments to aid in the accomplishment of the purposes for which government was organized. They are created as governmental instruments to carry out enterprises which government is not adapted to accomplish. They combine the capital, energy, and prudence of individuals, with a prospect of individual gain in the furtherance of the public interest and general welfare. Corporations, in theory at least, are never created simply for private gain. Their nature is inherently a monopoly, combining capital and power detrimental to private enterprise, and when they become injurious to or cease to promote the public interest they must be controlled or extinguished. They must never become to the States what the ancient barons were to the British Government—not only uncontrollable by, but more powerful than the government—unless we are prepared to surrender our liberties.

Charters for corporations are, in theory, granted upon a consideration rendered or to be rendered, and that consideration is that they will assist, within the scope of their power and within the
61 purposes of their organization, to accomplish the purposes for which government was organized. And when they cease to answer that purpose the consideration fails, and when they become instruments of oppression they must and will be controlled. If they shall be uncontrolled we must expect to see their power and oppres-

sion increase to distinctive lengths. The history of the East India Company illustrates the growth and abuse of irresponsible corporate power. From a small beginning it grew to be an instrument of oppression never surpassed in the world's history. All uncontrolled power is sure to be abused, and it increases with great rapidity, as illustrated by the East India Company and the Abbeys of England. Wholesome restraint is absolutely indispensable, or the people must be oppressed to the extent of the power of extortion possessed by these bodies. And the extent of the oppression is commensurate with the power of such bodies.

It is an axiomatic principle in our government that the people, even when acting in their sovereign capacity, or the Generel Assembly exercising a mere trust, or both combined, are wholly incapable of selling or surrendering the governing power of the State to persons, natural or artificial. The State has no more power to sell its sovereignty and produce its own destruction than has a natural person.

It is monstrous, ruinous, and destructive to government to hold that sovereign power may be sold, surrendered, impaired, or diminished by deed, by contract, by statute, or in any conceivable mode, and to do so would violate the plainest principles of government. Take away the powers necessary to government, whether they be direct or incidental, and sovereignty is destroyed to the extent it is diminished, because the power to pursue its existence and perform its functions is destroyed. The great and essential attribute of sovereignty is to pursue its existence, and the power to perform
62 the functions for which it was called into action. All know that without sovereign power there can be no government. When they are all surrendered government ceases, and when impaired or diminished the efficiency of government is impaired, and the power to protect the governed is destroyed in part, and the government fails in the purpose of its creation. It is then a monstrous constitutional heresy to hold that by merely conferring the power on this body to charge for services rendered in the course of its business, that the State surrendered the power to control such charges to the same extent, for the same reasons and purposes, that it may control similar rights or powers of natural persons. It was indispensable to the transaction of the business and to accomplish the purposes of the organization, that this franchise or power should be conferred, as without it the body would have been powerless to make and enforce charges for any kind of service. It is therefore impossible to infer from this grant of power any intention on the part of the legislature, to surrender its governing power over this body. But had it been expressly agreed in the most formal terms, by the charter, that the State surrendered and agreed never to exercise the governing power, it would have been absolutely void, because it is a sovereign power and is incapable of sale or surrender.

It follows from what has been said, that no well-founded claim can be urged for immunity form governmental control, simply from the grant of the charter, and the power to fix charges for carrying persons and property over its road. Such action is condemned by

the considerations here submitted. We held in the case of Wiggins Ferry Co. *v.* The People, 102 Ill., 560, that a corporation created by legislative charter, is subject [to] the same controlling power of the State as are natural persons. That case is conclusive of this question, of the power to control this corporation and to prevent
63 it from making unjust discriminations in this State.

But it is urged that the constitutional provision requiring this enactment is prohibited by the third clause of section eight of article one of the Federal Constitution, and for that reason the statute is void. That it is an attempt to regulate commerce between the States, and that power is possessed alone by Congress. Even if the charges of draymen, warehousemen, storing produce and merchandise, and railroads for conveying such property to market, could be raised to the dignity of commerce in any sense, or for any purpose, it is impossible to see how the regulation and prevention of unjust discriminations in this State under this law, can be held a regulation of commerce among the States. It is purely and simply the exercise of the great police or governing power of the State, within the State, over inhabitants of the State, for and in the interest of the good government.

The law does not purport to, nor can it be held, to affect property being transported through the State. It does not impose a tax or duty upon such property, nor does it prevent or regulate the carrying of such property through the State. It leaves such transportation perfectly free and unrestrained. Nor does it impose an export duty, tonnage rate, or any increased charge on property being carried beyond the line of the State, nor any duty or charge on property brought into the State. It does not, nor can it be tortured into the slightest attempt to, regulate or affect the charges that shall be made by other roads or carriers after it passes the boundaries of this State. It does not, nor can it by any possible means, affect the price of the commodities thus carried when they reach the market, whether in the State or abroad. Whether charges of the carrier shall be exorbitant or reasonable cannot affect the price of the commodity one penny when it reaches the New York market. It affects, and
64 can only affect, the producer, manufacturer, and shipper, and the carrier at the point of shipment, and that is purely local and is all within this State. How in the name of reason, is it possible to say, that the commerce of the States is affected, when there is neither an export or import duty or charge imposed on the commodity; nor are the roads or people of Indiana, Ohio, or New York affected one jot or tittle, nor the price of the article affected in the New York, or the ultimate, or intermediate market, to the extent of one cent. It would seem to be impossible to even imagine that the law in the remotest degree even tends to interfere with or to regulate commerce among the States. To so hold is to pervert language or disregard the relation of things, or to misapply and pervert principles.

The only possible immediate effect that is or can be produced is upon the producer, manufacturer, or owner of the property and the carrier by exorbitant charges or unjust discriminations in charges.

When they are exacted it reduces the price in the hands of the producer or shipper, and increases the receipts of the carrier. The purchaser deducts the price for transportation from its value in the market to which he ships, and enough more to pay him a profit when he purchases from the owner. Thus it is the owner or shipper is affected injuriously, and the carrier reaps the profit. Or if the producer or manufacturer ships their own produce to market, the amount of the unjust extortion is deducted from the price he receives, and to that extent the gains of the carrier are unjustly increased. But by no kind of reasoning is it possible to say that any other person's interests are affected from the time the article is shipped until it reaches the ultimate market, and not then. It then conclusively follows if after the commodity leaves this State the interests of no other person or corporate body is affected in the
65 slightest degree, that it is impossible to hold that commerce is affected by this law beyond the boundary of the State, or that it in the remotest degree affects or regulates commerce among the States.

It would, therefore, seem impossible by any process of reasoning, or by any rule of construction, to hold that this law in any sense, or in any degree, regulates commerce among the States, or even within this State. The manifest purpose of that clause was to prevent impositions, burthens, and obstructions on articles of commerce passing from one State to another, or such articles passing through States. It was intended that such commerce should, so far as State action should be concerned, be free and unobstructed. Can any person conjecture any other purpose for the insertion of that provision? And this statute leaves commerce as perfectly free and unobstructed between this and other States as was designed by the framers of the Federal Constitution. The contingency for congressional action has not arisen, nor can it until the State takes some other action than it has.

The same objection was interposed to the railroad and warehouse law in the case of Munn *vs.* Illinois, 94 U. S., 113, but after a most thorough and exhaustive consideration of all of the principles involved, the Supreme Court vindicated the law, and placed its validity on impregnable grounds by unanswerable reasoning, and decided the principle of the power of the local government to regulate its internal police by the most cogent and unanswerable reasoning. In fact, it has demonstrated the power and wisdom of such controlling power by the Legislatures of the States. In that case the principle was more expanded than is required in this case. There it was urged that there was an interference with commerce between the States, because the Legislature fixed the maximum charges for handling and storing grain by warehouses in Chicago that formed an intermediate link between eastern and western transporta-
66 tion companies, through which grain from Iowa, Nebraska, portions of Wisconsin, and of this State, was compelled to pass and be reshipped on connecting lines to the East. Yet that court justly and wisely held the law in no wise regulated or attempted to regulate commerce among the States.

It is impossible to conceive how any well-defined distinction can be made between that and this case. The principles involved are precisely the same. The doctrines of that case may be ignored, but they cannot have force and hold that the law in this case is prohibited by that clause of the constitution. It would be impossible to reconcile two such decisions without a resort to refinement, impalpable distinctions, and unmeaning exceptions. If this law is held unconstitutional the doctrines of that case must be disregarded or overruled. And from the force of the reasoning, the clearness of the statements of its doctrines, and the justice and wisdom of its principles, I believe they will never be annulled or modified. Their wisdom shows a thorough comprehension of the great underlying principles of our dual system of government, and to preserve its existence as formed by its founders they must be maintained in their full integrity.

The case of Canton *vs.* The Illinois Cent. R. — Co. — Iowa R. is referred to as announcing a different doctrine. Counsel for defendant in error insists there are well-founded distinctions between that and this case. Be that as it may, I shall not stop to enquire. Whilst I have high respect for the learning and ability of that court, I am unable to change my views as embodied in the opinions previously filed in this case. I am not convinced by its reasoning, and I believe that great fundamental and controlling principles were overlooked in its decision.

It is also urged that the Telegraph Co. *v.* Texas, 105, U. S., 460, is opposed to the validity of this law. In that case the facts
67 were different and the principles involved are unlike this case. Then the message sent, unlike the charges made for carrying in this case, affected the pecuniary interest of the receiver of the telegram. But there is no language to indicate that the court designed in the slightest degree to impair the doctrines of Munn *vs.* Illinois, *supra.* Nor can I even believe that so well considered a case will be overruled or its doctrines impaired until the court shall indicate the purpose by language or by deciding differently in a case similar in its facts and principles.

The whole question is one of power of the State to regulate its internal police, and to afford protection and good government to its people. To exercise the powers that were retained when the Union was formed, and to carry out the purposes for which the State governments were organized and is supported by the people. When people are aggregated into society they must and will have protection, and that can only be afforded by government. This necessity lies back and beyond all human government, and will be asserted by the people.

I assume, as an incontrovertible proposition, that the people, when acting in their sovereign capacity, may perform every governmental function, within its territorial limits, and as equally incontrovertible that the people, when so acting, may empower or require the legislature to perform and exercise all governmental power, unless prohibited by the Federal Constitution. The tenth amendatory arcle of that instrument expressly reserves all powers not delegated to

the Federal Government or prohibited by that instrument to the States or the people respectively. If, then, the States have not been deprived of this power, they may exercise it without limit or control. There can be no question that the State has the power to regulate commerce confined alone to the limits of the State. And if this regulation
68 was intended to and does only operate on the roads in the State and the carrying of freight within its limits, that is the end of this controversy. The provision of our Constitution, requiring the enactment under consideration, requires the law to prevent unjust discriminations and extortions for the carrying of persons and property on roads in this State. The statute, in terms, professes only to regulate roads in this State. The charges complained of were made by a railroad company of this State, and the transportation was over its road in this State. Then how, in the name of reason, can it be said that the constitutional convention or the Legislature have, in the slightest degree, attempted to interfere with or regulate the commerce between the States. This constitutional provision and the statute can, by no known rule of construction, be tortured into such an attempt. They relate to roads and charges for transportation in the State. They were designed to protect our citizens against oppression and extortion by the railroad companies created by, and amenable to, the authority of the State. The people must and will have protection against flagrant wrong, oppression, and extortion, whether perpetrated by natural or artificial persons. They framed and support [the] Government to afford just such protection. The constitutional provision and the statute were adopted to afford protection, and they have a right to have them enforced in their just and reasonable spirit. Is it possible that under the name of commerce these vast bodies shall be permitted to oppress and extort from the people without control or any limit but the amount they can wring from the people? Are the States to be shorn of the powers they undeniably possess, and which have been guaranteed to them by the Federal Constitution, because it may operate to derive these corporations of the unlimited and uncontrolled power to unjustly discriminate and extort in their charges for trans-
69 porting persons and property over their roads? Must the people be oppressed and impoverished by unjust exactions by uncontrolled monopolies because it may reduce the profits of these bodies in carrying the products of the farm and the pasture to market, and all in the name of commerce? Can any government lend itself to such ruinous oppression of its people and justify such injustice and oppression under the claim that it is promoting and advancing commerce? Are the great body of the people who produce and sustain commerce and these mighty corporate bodies to be forgotten in this race for gain by the speculator and these corprate bodies? Are the producers to be left without protection and at the mercy of those who may oppress them without restraint because it is said to afford them protection, will cripple or interfere with commerce? Justice, right, and the great primary purpose of founding government, would say not. It surely has not yet reached the point that commerce must be supported by oppressing the great

body of the people, by sanctioning oppression, injustice, and extortion.

Shall these parties be permitted to extort from the producer half the value of his property for conveying it to the nearest, or any other, market? And shall it be said that the great fundamental principles of our Government protects such flagrant injustice, and prohibits the State from protecting the citizen from such monstrous oppression? It may be said that this was not such a charge, nor do these bodies intend ever to make such charges. Human experience teaches that uncontrolled power is only limited by the interest that controls its exercise. One of the great purposes and necessities in the organization of government is to regulate and control the prices to be charged for property and labor to just and reasonable limits. Every natural person is compelled to submit to such legal restraint, and why not artificial persons? They are surely no more
70 sacred than natural persons; nor are their rights entitled to more respect or greater protection. Their right to contract is subject to the same limitation and control as that of natural persons. Government has the power and has always exerted it to control men's natural right to contract, and all of the governed must submit to the exercise of the power, whether they be natural or artificial persons. To leave these bodies unrestrained would be destructive to the producing classes, whose interests and rights seem to be wholly disregarded in this struggle for exemption from governmental control. In this fierce contest the interests of the trader and these bodies seem to be alone considered, whilst the producing class, upon which the other two are wholly dependent for their existence, seem to be wholly ignored, or, if not, they seem to be regarded as lawful prey for the others.

Shall these bodies be permitted to charge one person extortionate rates and carry for nominal rates for another? Shall they be permitted to become the arbiters of the growth and prosperity of one town or community and of the destruction of others? Shall they at will build up one community, enhance the value of its property by low rates of transportation, and depreciate property, diminish business, and impoverish the people in another by oppressive rates? Or shall they, by combination, be permitted to fix rates that render the producers their serfs? Shall they be permitted to fix rates so low in favor of the opulent manufacturer and so high on the products of his more humble rival as to drive him from the field of competition? Shall they be permitted to fix rates so exorbitantly high as to receive more for carrying products of the farm and factory than the cost of production? Shall they be permitted, by combination, to compel one portion of the people of the Union to labor without profit for the aggrandizement and opulence of another portion? Or shall they be permitted to compel all
71 classes to labor for their aggrandizement and increase of wealth? It may be these abuses have not occurred, but if not prevented they surely will whenever the interest of these bodies shall prompt such action.

Can it be possible that this or any other road of the State may

make arrangements with the roads out of the State to carry persons or property at given rates over their roads and then charge double or treble that sum for through transportation when the person or property has passed over but a few miles of road in this State and thus evade the law? Suppose under such an arrangement three-fourths of the price for freight from a point near the eastern line of this State to New York were imposed for carrying it over the few miles in this State, would it not be monstrous injustice? and shall it be said that the contract is entire and precludes all inquiry into the extortion and the constitutional and statutory provision defeated, and the people left unprotected from such monstrous oppression? Shall all reduction on freights from our State to the eastern markets thus inure alone to our railroads and not to our farmers and producers?

In this case plaintiff in error fixed the through rates in both cases. We have, therefore, the right to infer that it had full authority and that the rates beyond the State line were the same in both cases; if they were not, the fact would have been proved and thus shown that the rates were the same in this State, and a recovery defeated. If the rates were the same in both cases beyond the limits of the State it conclusively appears that the unjust discrimination was made in this State on the road of and by plaintiff in error, of this there would seem to be no question; and, if so, then the corporation has violated the law and is liable to the penalty.

The statute contains a most salutary provision, imperatively demanded for good government and for the protection of the peo-
72 ple against present and future injustice and oppression. Shall the courts, by strained and unauthorized construction, and, I may say, against all rules of construction, licénse these already powerful bodies to oppress the people and defeat the purposes compelling the formation of government? To leave them uncontrolled is to create an *imperium in imperio* that would inevitably lead to strife and conflict. The people have the inalienable right to protection against wrong and oppression, and there is no power known to our system of government that can render mere artificial persons, created as instruments to promote the purposes of government, independent of the government, or that can license them to oppress the people. Such a proposition is too monstrous to be entertained. It would be opposed to every principle of government, reason, and justice. Shall we, then, on mere shallow pretexts, defeat the constitution and the statute, both adopted within the scope of undoubted power? Most assuredly not.

Is it possible to hold that an entire contract based on unjust discrimination and extortion is too sacred to be examined and its true character exposed, and its iniquity punished? Government is not so impotent as not to be able to detect oppression under any guise it may assume.

Can this constitutional provision and statute be evaded by the mere pretext that the contract is an entirety, and cannot be divided to ascertain where the extortion or unjust discrimination was made? Can the company be permitted to charge less for transportation from

the west side of the State over two hundred miles of its road to a place a few miles into the State of Indiana, than for ten miles west of the Indiana line, to the same point in that State, and be protected in the palpable evasion under the claim that the constitution and law is an attempt to regulate commerce between States? Is a constitution and a law to be rendered inoperative by such a transparent evasion? Courts surely will not defeat a statutory provision so imperatively demanded for the protection of the people from present or future injustice and oppression. It is not the function of the courts to construe the Constitution in the interest of oppression and for its promotion, and to cripple, diminish, and suppress liberty, justice, and right. There are and can be no persons, classes or governmental instruments above and beyond the governing power of the State under our form of government. Nor has Congress or any of the Federal functionaries power to create such classes, nor does Congress have a particle of constitutional power to interfere or intermeddle with the internal affairs or police powers of the States. It would be bold usurpation for it to attempt to fix the rights, control the acts or relations and duties of the people to the State or to each other, or to attempt to fix such relations between corporate bodies and the State or the people; nor can any other branch of the Federal Government accomplish such results without usurping powers.

73

How in the name of reason is it possible to hold that a statute, which in terms relates to railroads located and operated in the State under State control and relating alone to the acts of the railroads in the State, and by no language or provision referring to roads beyond the limits of the State, is a statute to regulate commerce between this and other States? The law only acts on roads in this State, and that such action can be prohibited by that clause of article one of the Constitution would seem to beutterly impossible. The railroad is a State corporation, located and operated in the State, and amenable to State control. The unjust discrimination and extortion was made in the State; the transportation was in the State, and is it possible, without the utter disregard of language, to hold that such a law is prohibited by that clause of the Constitution. To so hold is to impart terms or provisions into that instrument that were not placed there by its framers. It would be to amend and enlarge the clause to embrace purely State police power, and to control legislative action and prevent just government and necessary protection to the people. It is impossible to perceive how this provision has any more controlling effect in this case than the power of the Executive to convene Congress in a case of emergency. When the State shall attempt to control commerce between itself and other States it will be time to invoke this provision. But even then it may be gravely doubted whether the mere charges a common carrier may make for transporting property between or through the States can be raised to the dignity of commerce. The mere change of names never changes the nature or property of things. To call the compensation of the common carrier commerce, if it is not, it remains the same, and but simply compensation. Has any one ever supposed

74

that the wages paid to laborers, mechanics, artisans, to draymen or or hackmen constitutes commerce, or any part of it? Yet they all contribute to its support. A large portion of the commodities entering into and swelling the commerce of the country pass through the hands of and is transported by draymen, and shall it be said the Legislature has no power to regulate their charges because it is prohibited by that clause of the constitution—that the drayman is engaged in commerce, and is a link in the great chain of instruments necessary to its support. If prohibited by that clause, it has been generally and uniformly violated by the Legislatures of every State in the Union since its adoption, without its being suspected. Each of these occupations depend- on entirely the same principle. It is impossible to make any well-recognized distinction. The one transports vastly more, and in a different manner from the other, but small sums and operations of precisely the same character must be governed by the same rules as larger ones.

But if it were conceded that Congress has power, under that clause, to regulate such charges it has never acted. And shall the people be deprived of protection because the State cannot and Congress will not act, and, without usurpation, the courts are unable to afford relief? Must the people remain unprotected? In such cases can it be doubted that the Legislature may act until the Federal power shall be exerted?

The reports of the Federal Supreme Court abound in adjudged cases announcing this doctrine, and it must be so from inevitable necessity. The people must have protection against injustice and wrong, and it must be from the very nature of our dual system of government that the Legislatures of the States, in such cases, may afford protection until Congress shall take action, and the absolute necessity for protection vindicates the wisdom of the doctrine.

In any view I am able to take of this case I cannot perceive that there has been the exercise of the slightest excess of power in the adoption of the provision of the constitution or the statute under which this proceeding was instituted. To hold that power was exceeded would lead to the most ruinous, if not destructive, results. It would deprive the States of their just governmental power guaranteed to them by the Federal Constitution. It would prevent them from affording the protection for which the State governments were organized. It would leave the people at the mercy alone of great, powerful, and grasping corporate bodies *alone* and beyond the power of governmental control. It would strike down and render necessary governmental control impossible. It would be to license these bodies to oppress the people; to build up some places and communities and to destroy others; to render some persons opulent and to crush and destroy others without any power to control their acts or stay the hand of oppression. I feel, and cheerfully recognize, the right of these bodies to the same measure of justice and protection as natural persons. But my understanding of the law, and my sense of justice, compel me to refuse to accord to them exemption from the governing power of the State. They have contributed largely to the developement of

the resources of the country, but without their aid the same results would have been attained in time. They have hastened the growth and developement of the country; but, concede all that is claimed for them, it does not nor can it require as a compensation that we shall subvert the great underlying principles of our Government. The time may come when it will be seen that by this wonderful development claimed for them, all of the misery, suffering, and want incident to older countries has been prematurely thrust upon our people by these bodies. All of these advantages, as great as they are, will certainly have their compensations. And if the destruction of our free institutions, and the blessings that no other form of government than ours can bestow, must be the compensation, it will be a fearful price paid for the advantages we are enjoying. To hold the Legislature has no power to control them is to destroy one of the essential and indispensable powers of Government, and is to overthrow the just powers of the States, and is a long stride towards their destruction. I regard the power exercised by the Legislature as existing and well exercised, and must hold that the judgment of the court below must be affirmed. There are other cogent reasons in favor of my conclusion that might be urged, if time and space would permit. These are but some of the most obvious that lie on the surface of the case, and cannot be overlooked and disregarded in its decision.

77 And be it further remembered that afterwards, to wit, on the 29th day of January, in the year of our Lord one thousand eight hundred and eighty-three, an order was made by said court in words and figures following, to wit:

Appeal from Ford.

THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 55.

On this day come again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error; therefore, it is considered by the court that the judgment aforesaid be affirmed in all things, and stand in full force and effect, nothwithstanding the said matters and things therein assigned for error, and it is further considered by the court that the said appellees recover of and from the said appellants costs by them in this behalf expended, and that they have execution therefor.

And be it further remembered that afterwards, to wit, on the third day of February, A. D. 1883, there was filed in the office of the said clerk of the Supreme Court an appeal bond, which is in words and figures as follows, to wit:

78 Know all men by these presents that we, the Wabash, St. Louis & Pacific Railway Company, as principal, and Charles Ridgely, as surety, are held and firmly bound unto the People of the State of Illinois, in the full and just sum of two thousand dollars, to be paid to the said People of the State of Illinois, their attorney or assigns; to which payment, well and truly to be made, we bind ourselves and the heirs, executors, and administrators of said surety, jointly and severally, by these presents.

Sealed with our seals and dated this 31 day of January, A. D. one thousand eight hundred and eighty-three.

Whereas lately at a term of the supreme court of the State of Illinois, in a suit depending in said court between the said Wabash, St. Louis & Pacific Railway Company and the said People of the State of Illinois, a judgment was rendered against said Wabash, St. Louis and Pacific Railway Company, and the said Wabash, St. Louis & Pacific Railway Company having obtained a writ error and filed a copy thereof in the clerk's office of the said supreme court of the State of Illinois to reverse the judgment in the aforesaid suit, and a citation directed to the said People of the State of Illinois, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Wabash, St. Louis & Pacific Railway Company shall prosecute said writ of error to effect and answer all damages and costs if it, the said railway company, shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

79 In testimony whereof the said Wabash, St. Louis & Pacific Railway Company has caused its name to be signed hereto by its vice-president and its corporate seal to be affixed thereto by its secretary.

[Wabash, St. Louis and Pacific Railway Company, 1879.]

THE WABASH, ST. LOUIS & PACIFIC R'Y CO.,
By JAMES F. HOW, *3d Vice-P'r.* [SEAL.]
CHARLES RIDGELY. [SEAL.]

Attest: JAMES F. HOW, *Sec'y.* [SEAL.]

Sealed and delivered in presence of—
H. S. GREENE.

Approved by—

JOHN M. SCOTT,
Chief Justice of the Supreme Court of the State of Illinois.

Done at Bloomington, Illinois, this 31st day of January, A. D. 1883.

And be it further remembered that afterwards, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and eighty-three, the following "citation" and affidavit were filed in the office of the said clerk of the supreme court:

80 The United States of America to the People of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be be holden at Washington on the second Monday of October dext, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein the Wabash, St. Louis and Pacific Railway Company is plaintiff in error and the People of the State of Illinois defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Scott, chief justice of the supreme court of the State of Illinois. Done at Bloomington, Illinois, this 31st day of January, in the year of our Lord one thousand eight hundred and eighty-three.

JOHN M. SCOTT,
Chief Justice of the Supreme Court of Illinois.

81 On this third day of February, in the year of our Lord one thousand eight hundred and eighty-three, personally appeared Frank W. Burnett before me, the subscriber, E. A. Snively, clerk of the supreme court, State of Illinois, and makes oath that he delivered a true copy of the within citation to James McCartney, attorney general of the State of Illinois, who was also attorney of record for defendant in error in said cause while pending in said State court, and a like true copy thereof to Shelby M. Cullom, Governor of the State of Illinois; said copies being so delivered on the third day of February, in the year of our Lord one thousand eight hundred and eighty-three.

FRANK W. BURNETT.

Sworn and subscribed before me, this third day of February, A. D. one thousand eight hundred and eighty-three.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

E. A. SNIVELY,
Clerk Supreme Court, State of Illinois.

82 [Endorsed:] Wabash, St. Louis & Pacific Railway Company *versus* The People of the State of Illinois. Citation and affidavit. Filed Feb. 3, 1883. E. A. Snively, c'k. Greene & Burnett, attorneys for plaintiff in error.

83 I, E. A. Snively, clerk of the supreme court in and for the central grand division, State of Illinois, do hereby certify that the above and foregoing is a true and correct copy of the original record in a certain cause wherein the Wabash, St. Louis & Pacific Railway Company was the appellant and the people of the State of Illinois were the appellees, and also a true and correct copy of all the proceedings had and of record in the said supreme court, and also a true and correct copy of the appeal bond filed in said cause,

also the original "citation" and affidavit of service thereof, as the same appears from the records and files in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court, at Springfield, Illinois, this twenty-fourth day of February, A. D. 1883.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

E. A. SNIVELY,
Clerk Supreme Court.

84 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the chief justice and judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Wabash, St. Louis & Pacific Railway Company, plaintiff in error, and The People of the State of Illinois, defendant in error, wherein was drawn in question the validity of a statute of said State, on the ground of said statute being repugnant to the Constitution of the United States, and the decision was in favor of the validity of said statute; and wherein was also drawn in question the
85 construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said Wabash, St. Louis & Pacific Railway Company, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done
86 therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 31st day of January, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and seventh year.

[The Seal of the Circuit Court of the United States, South. Dist. Ill.]

J. A. JONES,
Clerk of the Circuit Court U. S. South. Dis. Ills.

Allowed by—

JOHN M. SCOTT,
Chief Justice of the Supreme Court of the State of Illinois.